

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Destry C. Bennett,

Petitioner,

V.

Charles L. Ryan, *et al.*,

Respondents.

No. CV-17-04773-PHX-JJT (ESW)

ORDER

At issue is the Report and Recommendation (“R&R”) (Doc. 11) entered in this matter by United States Magistrate Judge Eileen S. Willett, recommending that the Court dismiss the Petition for Writ of Habeas Corpus (Doc. 1) as untimely. In the R&R, Judge Willett advised Petitioner that he had fourteen days after service of the R&R to file any objections to it, and that failure to timely file objections could result in this Court’s acceptance of the recommendations. (Doc. 11 at 8.) The time for filing objections has now long passed and no party has filed any. The Court thus may accept the recommendations of the R&R without further review. Nonetheless it has reviewed the matter independently, and upon that review, concludes that Judge Willett’s conclusions and her resulting recommendation are correct under the law.

Defendant was sentenced in this underlying matter on March 12, 2012. Pursuant to Arizona Rule of Criminal Procedure 32.4, he had 90 days from that date—or until June 7, 2012—to file a notice seeking Post-Conviction Relief. He filed no such notice until January 28, 2015, over two and a half years too late. The limitations period for filing his 2254

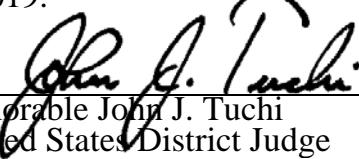
1 Petition commenced June 8, 2013, and expired a year later on June 7, 2013, so his 2254
2 Petition, filed December 26, 2017 is over three and a half years untimely. Statutory tolling
3 is unavailable, and Petitioner has not met his burden to show any extraordinary
4 circumstances beyond his control that made it impossible for him to timely file. He thus
5 does not qualify for equitable tolling, and neither does he make an actual innocence claim.
6 Accordingly,

7 IT IS ORDERED adopting in whole the Report and Recommendation by Judge
8 Willett (Doc. 11).

9 IT IS FURTHER ORDERED dismissing as untimely the Petition for Writ of Habeas
10 Corpus pursuant to 28 U.S.C. §2254 (Doc. 1). The Clerk of Court shall terminate this
11 matter.

12 IT IS FURTHER ORDERED denying a certificate of appealability and leave to
13 appeal *in forma pauperis* upon a finding that dismissal of the Petition here is justified by
14 the plainest of procedural bars.

15 Dated this 26th day of February, 2019.

16 
17 Honorable John J. Tuchi
United States District Judge

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